

CALIFORNIA COASTAL COMMISSION

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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F6200-A2

Applicant: INYAHA, LLC

Agent: Victor Fargo and Matt Peterson

Original

Description: Construction of five (5) detached single-family homes to include a community pool, sauna and tennis court.

First

Amendment: Reduce the number of residential units from five (5) to four (4). All special conditions of the original approval remain in full force and effect.

Proposed

Amendment: Demolition of a wooden deck (not authorized by the original permit or the prior amendment) and construction of a 15 ft. by 45 ft. swimming pool with spa (including a small wooden deck with pool equipment underneath), retaining walls, grading and landscaping on steep hillside in the rear yard of one of the single-family residences on a 15,316 sq. ft. site.

Site: 2610 Inyaha Lane, La Jolla, San Diego, San Diego County. APN 344-310-05

STAFF NOTES:

This amendment request seeks authorization for a somewhat “scaled-down” version of the pool subject to review by the Commission under Appeal #A-6-LJS-05-071/Fargo also scheduled for the February Commission meeting. The pool subject to the appeal is approximately 25 ft. by 56 ft and includes two levels and spa with wooden decking surrounding it. The pool subject to this amendment is located in the same location on the steep hillside, but eliminates the lower pool level and most of the decking surrounding the pool and relocates the spa from the southern end of the pool to the eastern side of the pool (closest to the house) resulting in an approximately 15 ft. by 45 ft. one-level pool.

However, while the size of the finished pool is proposed to be reduced, the foundation, pool floor and most of the walls for the larger pool have already been constructed and are proposed to remain as retaining walls with this amendment request.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the proposed amendment request as it is inconsistent with the provisions of the certified Local Coastal Program (LCP) pertaining to protection of steep hillsides. The City's LCP includes development regulations for sites that contain steep hillsides. These regulations require that development avoid encroachment into steep hillsides and if encroachment is necessary to achieve reasonable use of the site, that such encroachment be minimized. In this particular case, while the site does contain steep hillsides, reasonable use has already been achieved. The subject site contains a relatively flat pad where the existing home is located and then slopes steeply down to the west and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean. The proposed development will occur on steep hillsides and includes grading of the entire hillside area, excavation of the hillside to accommodate the pool and then construction a pool and spa on the hillside beginning approximately 20 ft. west of the existing home. The steep hillside regulations of the certified LCP are perfectly clear regarding the siting of accessory uses and specifically prohibit the construction of pools and spas on steep hillsides. Because the pool and spa are proposed on the steep hillside portion of the site, inconsistent with the LCP provisions, staff recommends the Commission deny the proposed request.

STANDARD OF REVIEW: Certified City of San Diego Local Coastal Program and the public access and recreation policies contained in Chapter 3 of the Coastal Act.

Substantive File Documents: Certified City of San Diego Local Coastal Program (LCP); CDP #F6200 and amendments

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve proposed amendment to Coastal Development Permit No. F6200 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby **denies** the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the provisions of the certified local coastal program and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The proposed project involves an amendment to a 4-unit PRD to demolish an existing approximately 18 ft. by 72 ft. wooden deck and perform grading (unknown amount) and construction of an approximately 15 ft. by 45 ft. swimming pool with spa on a steep hillside in the rear yard of an existing single-family residence (one of the original units approved under the PRD) at 2610 Inyaha Lane in the La Jolla community of the City of San Diego. The project also includes construction of a small wooden deck next to the pool with the necessary pool equipment below it and landscaping of the remaining slope area. The project has been already partially constructed including the removal of the original deck, grading of the slope, landscaping and construction of the concrete pool floor, foundations and most of the pool walls.

The subject site is located on the northwest end (cul-de-sac) of Inyaha Lane, just west of La Jolla Shores Drive (the first public road inland of the sea in this area) in the La Jolla community of the City of San Diego. The 15,316 sq. ft. lot contains a relatively flat pad where the existing home is located and then slopes steeply down to the west and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean.

2. Development History. The creation of the lot (through a subdivision) and the construction of the home were originally approved by the City of San Diego Planning Commission on September 8, 1977 as part of a 5-unit Planned Residential Development (PRD) on 2.7 acres (PRD #114). Subsequently, on November 4, 1977, the Coastal Commission approved a coastal development permit (CDP) for the same development (ref. CDP #F6200). The CDP included special conditions that restricted development on those lots bordering the canyon (which includes the subject site) to the flat portions of the site such that no development could occur “west or canyon side of the 72.50 elevation line as indicated” on the project plans and that the development be graded such that drainage into Sumner Canyon was not increased significantly over that which occurred naturally. The 72.50 elevation line corresponds approximately with the edge of the steep hillside portions of the sites where the sloping hillside joins the flat pad on the canyon top. In March of 1978, the Commission approved an amendment to CDP #F6200 to reduce the number of residential units from five (5) to four (4). All other features and special conditions of the original approval remained the same. Upon review of the approved grading plans for the amended project by Commission staff, it was confirmed that no

grading was proposed or permitted beyond the canyon edge, and no other coastal development permits or amendments to CDP #F6200 have since been approved by the City or the Coastal Commission for grading of the steep hillside.

However, in 1989, the City of San Diego approved an amendment to its original PRD to allow a 100 sq. ft. addition to the existing home at the subject site and a deck and lap pool in the rear yard of the home (ref. PRD #89-0734). At that time, the City had been delegated coastal development permit authority (authority was transferred in 1988). However, the City did not approve a corresponding CDP for the development approved by the amendment to the PRD, as the Commission had done in 1978. Instead, the City exempted the project from coastal development permit review on the basis that it involved an improvement to a single-family home located between the sea and the first public road parallel to the sea that did not increase floor area by more than 10% (ref. City of San Diego old Municipal Code section 105.0204(A)3). However, this development was never constructed. Subsequently, the City approved a different project adding to the existing home, finding that the proposed residential additions were in “substantial conformance” with PRD #89-0734. Specifically, in November of 1993, the City authorized a 476.75 sq. ft. addition to the existing 4,000 sq. ft. home and the addition of a wooden deck in the rear yard extending west over the steep hillside portion of the site (ref. November 16, 1993 letter from Kevin Sullivan to Michael Brekka – Exhibit #5). This time however, the proposal did not include a pool but did include a more than a 10% addition of floor area to the existing home located between the first public road and the sea. Therefore, it did not qualify for the exemption in section 105.0204(A)3 of the City’s old Municipal Code. Nevertheless, the City did not require a coastal development permit for the proposed addition.

Relative to the subject development, the City of San Diego reviewed the initial request (which was for an earlier version of the presently-proposed pool) and found that the new proposed pool located on the steep hillside in the rear yard of the existing home did not require review under the City’s delegated Coastal Act authority or issuance of a coastal development permit. In accordance with that determination, on April 5, 2004, the City issued Ministerial Permit #75384/PTS #29138 allowing the pool to be constructed. Subsequently, construction on the pool began and a number of complaints were filed with the City by neighbors claiming that the steep hillside area of the site was graded and that this grading extended beyond the property line into the open space area of Sumner Canyon. Upon review by City staff, it appeared that grading exceeded that authorized in the ministerial permit and work was required to stop. Since that time, the City had been coordinating with the applicant to get additional information and require plans for restoration of the area where grading extended beyond the property line into the canyon. During this time the project was revised by the applicant, shifting the pool approximately 10 ft. to the north and adding a deck around the pool, relocating the pool equipment and adding landscaping on the slopes surrounding the pool. Recently, the City once again authorized work to commence on this new pool project without requiring a coastal development permit. While the City’s records do not indicate when construction was again permitted to continue, a landscape plan approval was stamped as approved by the

City on April 29, 2005. Thus, it was sometime after this date that the City authorized the applicant to commence work on the now revised project.

On July 19, 2005 an appeal of the City's decision to not require a coastal development permit for the pool development was filed with the Commission. On August 9, 2005 the Commission found that the appeal raised a Substantial Issue, as the proposed project did not qualify for an exemption from Coastal Act permitting requirements pursuant to either the City's certified LCP or the regulations promulgated by the Commission to implement the Coastal Act. At the February 2006 hearing, the Coastal Commission will review the de novo staff recommendation on this appeal.

The pool subject to this amendment is a somewhat "scaled-down" version of the pool being reviewed by the Commission on appeal and differs from the project being reviewed by the Commission on appeal in several ways. The pool subject to this amendment is located in the same location on the steep hillside, but eliminates the lower pool level and most of the decking surrounding the pool and relocates the spa from the southern end of the pool to the eastern side of the pool (closest to the house) resulting in an approximately 15 ft. by 45 ft. one-level pool. However, while the size of the finished pool is proposed to be reduced, the foundation, pool floor and most of the walls for the larger pool have already been constructed and are proposed to remain as retaining walls with this amendment request.

While the project site is located within the City of San Diego's CDP permit jurisdiction, the project is being reviewed by the Commission as an amendment to a previously issued coastal development permit approved by the Commission (ref. CDP #F6200). Thus, the standard of review is the certified LCP as well as the public access and recreation policies of the Coastal Act.

3. Development on Steep Hillside/Visual Resources. The subject development involves the construction of a pool/spa on a steep hillside area of a site containing an existing single-family residence. Steep Hillside are defined in the City's certified implementation plan (Land Development Code) as follows:

Steep hillside means all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

In addition, the LCP (Steep Hillside Guidelines) provides clarification in determining if steep hillside are present as follows:

If the site contains steep hillside but does not have 50 feet of vertical elevation, an off-site analysis of the adjacent property(s) must be made to determine whether the steep hillside on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevation. See Diagram 1-2. If the 50-foot elevation is

met when considering the extension of the steep hillsides off-site, the subject site will be subject to the steep hillside regulations.

The 15,316 sq. ft. project site contains an existing two-story single-family residence on the level portion of the lot adjacent to Inyaha Lane. West of the residence there is an existing tiled patio that extends approximately 16 ft. to 24 ft. from the home. Just beyond the edge of the patio, the site slopes steeply downward (greater than 25% gradient) to the western property line. From the property line westward, the slope continues down and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean.

As cited above, in order for the project site to be considered a “steep hillside” under the City’s LCP, three criteria must be met: 1) the land must have a slope with a natural gradient; 2) the slope must be 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater; and, 3) there must be a minimum elevation differential of 50 feet. As is explained below, all three criteria are satisfied in this case.

a. Natural Gradient

It is not clear what, if any, vegetation existed on this steep hillside prior to the grading as the entire area has been cleared and graded. However, according to the applicant, native vegetation was not present on the slope as it had been removed to meet necessary brush management requirements for the home/deck. While vegetation on hillside may have previously been removed to meet necessary fire safety regulations, such brush management requirements did not include grading (the presence of native vegetation on the slope is not necessary in determining whether or not the slope gradient is natural) and the gradient of the slope remains natural. As noted in the project description above, when the Coastal Commission approved development of the site, a special condition was placed on the permit to protect the steep hillside area and the adjacent Sumner Canyon which states:

Special Conditions:

1. That no development occur to the west or canyon side of the 72.50 elevation line as indicated on the attached plot plan. [ref Exhibit Nos. 9 & 10 attached] This would prevent any filling or supportive structures which may create or contribute significantly to erosion or geologic instability of the site.

The findings supporting this condition state that:

...adherence to Special Condition 1 will effectively assure that development along the canyon rim will not create nor contribute significantly to erosion or geologic instability **while providing for preservation of the canyon rim natural landforms.** [emphasis added]

Subsequently, the permit was amended to reduce the development from 5 to 4 units (ref. Exhibit #11 attached). Specifically, the amended project description is as follows:

PROPOSED AMENDMENT: The applicant proposes to reduce the number of residences from five to four. The amended project would result in more landscaped open space and less building coverage. **All the special conditions attached to the original approval remain in force. [emphasis added]**

In reviewing the amended project plans, Commission staff determined that the proposed home at 2610 Inyaha Lane, while increased slightly in size (approximately 250 sq. ft.), was re-sited further back from the top of the slope than the originally-approved home and now included a deck extending slightly beyond the top edge of the slope. As the approved grading plans do not show any grading beyond the top of the slope, it is assumed the portion of the deck that extended beyond the top of slope was cantilevered. This would be consistent with the previous special conditions that prohibited development beyond the top of slope to prevent any filling or supportive structures. No other coastal development permits have been issued to authorize development or grading beyond the top of the slope.

The applicant's consultants have suggested that the proposed pool is not on a steep hillside because the slope is not a "natural gradient," as it was previously graded. In support of their claim, the applicant's consultants have presented a copy of a grading plan produced in connection with the original PRD approval that purports to show grading beyond the top of the slope (ref. Exhibit #8 – Page 17 of 62). They suggest that this plan represents evidence that the Commission has not considered the slope to be a steep hillside. However, this plan is not the approved grading plan for the project, but instead represents an old plan that was required to be revised by the Commission's approval of the original PRD (but that has also been modified by the consultant). Thus, the history of the Commission's review of this plan proves just the opposite of what the applicant's consultant claims. Neither the original approval for 5 units, nor the amended project (4 units) allowed grading to occur beyond the canyon rim. As noted above, the original 5-unit PRD approval by the Commission required that the project be revised such that no development occur beyond the canyon rim (72.50 elevation). Exhibit #9 of (attached) is a copy of the original Coastal Commission staff report for the 5-unit PRD that includes an exhibit depicting the canyon area and the 72.50 elevation beyond which no development was permitted to extend. Exhibit #9 also includes a copy of the site plan for the original 5-unit PRD approved by the Coastal Commission, which includes a note "CANYON AREA (not to be developed)" as the darkened area. The topography on the plan that the applicant's representative claim is proposed grading is noted as "existing topography", not proposed grading. In addition, the approved grading plans for the approved PRD, as amended, clearly show no grading beyond the canyon rim, and no such grading could have been allowed consistent with the conditions listed above (or the findings).

The applicant's claim, that the amended project deleted the requirement to maintain all development behind the 72.50 elevation, is also not correct. Again, as noted above, the revised project approved by the Commission in 1978 only reduced the project from 5 units to 4 units and specifically noted that "[a]ll the special conditions attached to the

original approval remain in force.” The applicant has also submitted a letter from a geologist regarding “artificial fill” within the western portion of the lot, in and around the proposed pool. Based on visual observations at the site, the geologist indicates that “a relatively thin veneer (<5 foot-thick) of artificial fill has been placed over the entirety of the slope within and west of the proposed pool.” While it may be that some limited fill has been previously placed on the steep slope area in and around the proposed pool location, as noted above, such fill placement has never been authorized through a coastal development permit. Thus, if any grading has occurred on the steep hillside portion of the site, it was done without proper authorization and is inconsistent with the Commission’s approval as originally issued or as amended. Therefore, the western facing slope where the pool/spa is proposed must be considered a “natural gradient”.

It should be noted that there was a violation complaint filed in 1979. This complaint indicated that grading had occurred beyond the edge of the canyon inconsistent with the Commission’s approval of the subdivision. While the applicant’s representative claims that the Commission did not pursue the complaint because the project had been revised to allow grading over the canyon edge, this too is not correct. No records, other than the violation complaint, exist regarding this matter. There is no records or any evidence that would suggest that the Commission dismissed the complaint because it had allowed grading over the canyon rim. In fact, it is not clear if the complaint even pertains to the slope on the subject site. In addition, even if the complaint did apply to the subject site, there could be many reasons why the Commission did not prosecute it to completion, and the fact that the Commission did not do so would in no way change the facts at issue or preclude the Commission from enforcing the applicable restriction now. In any case, this complaint does not in any way support the applicant’s claim that the Coastal Commission authorized grading beyond the canyon rim nor that the western facing slope of the subject site should not be considered a “natural gradient”.

b. 25% Gradient and 50 Foot Height

In addition, the project plans for the original development and the proposed pool documented that the slope on which the pool is proposed has a gradient of greater than 25 percent. Lastly, while the elevational differential on the subject site is less than 50 ft. (approximately 25 ft in elevation drop from the top of the slope to the western property line), the LCP includes a provision explaining how the elevation differential is to be calculated and expressly stating that an off-site analysis of the adjacent property is appropriate to determine whether the slopes on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevational differential requirement. As cited above, the LCP provides that if the 50-foot elevation is met when considering the extension of the steep hillsides off-site, the subject site will be subject to the steep hillside regulations. In this particular case, the hillside continues well past the western property line with a total elevational differential of greater than 100 ft. Therefore, based on the above discussion, the subject site meets all of the LCP requirements to be considered a steep hillside.

c. Application of the Applicable LUP Policies and Steep Hillside Regulations

Given that the project site is considered a steep hillside, the Steep Hillside Regulations of the certified LCP apply unless the development is exempt from coastal development permit review. The Commission has already found that the project for a somewhat larger pool is not exempt from coastal development permit review as detailed in the findings for Substantial Issue, which are herein incorporated by reference (ref. Coastal Commission Substantial Issue Staff Report #A-6-LJS-05-071 dated July 28, 2005). Therefore, the Steep Hillside Regulations of the City's LCP apply and state, in part:

i) LUP Policies

Policy 4 (Page 51/52) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

4. Steep Hillsides

- a. The City shall apply the Environmentally Sensitive Lands regulations to all new development on property in La Jolla having slopes with a natural gradient of 25 percent or greater and a minimum differential of 50 feet. The Environmentally Sensitive Lands regulations provide supplementary development regulations to underlying zones such as development encroachment limits for natural steep slopes, erosion control measures and compliance with design standards identified in the Steep Hillside Guidelines. Development on steep hillsides shall avoid encroachment into such hillsides to the maximum extent possible. When encroachment is unavoidable, it shall be minimized and in accordance with the encroachment limitations standards contained in the plan. These regulations assure that development occurs in a manner that protects the natural and topographic character of the hillsides as well as insure that development does not create soil erosion or contribute to slide damage and the silting of lower slopes. Disturbed portions of steep hillsides shall be revegetated or restored to the extent possible.
- b. The City shall not issue a development permit for a project located on steep hillsides in La Jolla, unless all the policies, recommendations and conditions identified in this plan element are met.

Plan Recommendation 5 (Pages 61-64) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

5. Steep Hillsides

In addition to the recommendations contained in the Residential Element of this plan and the requirements of the Land Development Code, including the Environmentally Sensitive Lands regulations and the Steep Hillside Guidelines

of the Land Development Manual, the following Hillside Development Guidelines shall be used as requirements in evaluating new development on all properties containing slopes in La Jolla which equal or exceed 25 percent:

- a. Keep driveways, parking areas, tennis courts, swimming pools, and other accessory uses to a minimum, and locate them on more level portions of the site in slopes below 25 percent.

[...]

- k. Set back large residential structures from the top of steep hillsides so that the design and site placement of a proposed project respect the existing natural landform and steep hillside character of the site. This is especially important for those locations that are visible from natural open space systems, parklands, major coastal access routes and the seashore. The reservation of the natural character of these areas depends upon minimizing visual intrusions.

ii) Implementing Ordinances

The Environmentally Sensitive Lands (ESL) Regulations of the City's Land Development Code address development on steep hillsides. The following provisions of the ESL Regulations are applicable to the proposed development.

Section 143.0110 When Environmentally Sensitive Lands Regulations Apply

This division applies to all proposed development when environmentally sensitive lands are present on the premises.

- (a) Where any portion of the premises contains any of the following environmentally sensitive lands, this division shall apply to the entire premises, unless otherwise provided in this division:

- (1) Sensitive biological resources;

- (2) Steep hillsides;

[...]

Section 143.0113 Determination of Location of Environmentally Sensitive Lands, Applicability of Division and Decision Process

- (a) In connection with any permit application for development on a parcel, the applicant shall provide the information used to determine the existence and location of environmentally sensitive lands in accordance with Section 112.0102(b).

- (b) Based on a project-specific analysis and the best scientific information available, the City manager shall determine the existence and precise location of environmentally sensitive lands on the premises.

Section 143.0142 Development Regulations for Steep Hillside

Development that proposes encroachment into steep hillsides or that does not qualify for an exemption pursuant to Section 143.0110(c) [not applicable here] is subject to the following regulations and the Steep Hillside Guidelines in the Land Development Manual.

[...]

- (4) Within the Coastal Overlay Zone, steep hillsides shall be preserved in their natural state....

[...]

- (b) All development occurring in steep hillsides shall comply with the design standards identified in the Steep Hillside Guidelines in the Land Development Manual [see below] for the type of development proposed.

[...]

- (f) Any increase in runoff resulting from the development of the site shall be directed away from any steep hillside areas and either into an existing or newly improved public storm drain system or onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off.

- (h) All development on steep hillsides located in La Jolla or La Jolla Shores Community Plan areas, shall, in addition to meeting all other requirements of this section, be found consistent with the Hillside Development Guidelines set forth in the La Jolla – La Jolla Shores Local Coastal Program land use plan.

In order to help the City interpret the development regulations for steep hillsides, the City of San Diego has developed the Steep Hillside Guidelines (which are included as a component of the City's certified LCP). The following provisions of the guidelines are applicable to the proposed development.

Steep Hillside Guidelines Introduction

The Steep Hillside Guidelines are divided into four sections, each providing standards and guidelines intended to assist in the interpretation and implementation of the

development regulations for steep hillsides contained in Chapter 14, Article 3, Division 1, Environmentally Sensitive Lands. **Every proposed development that encroaches into steep hillsides will be subject to the Environmentally Sensitive Lands Regulations and will be evaluated for conformance with the Steep Hillside Guidelines as part of the review process for the required Neighborhood Development Permit, site Development Permit or Coastal Development Permit.**
[emphasis added]

[...]

Section 1 DESCRIPTION OF REGULATIONS

(A) **143.0110 When Environmentally Sensitive Lands Regulations Apply**

Generally, the steep hillside regulations of the environmentally Sensitive Lands regulations are applicable when development is proposed on a site containing any portions with a natural gradient of a least 25 percent (25 feet of vertical distance for every 100 feet of horizontal distance) and a vertical elevation of at least 50 feet....

[...]

(B) **143.0113 Determination of Location of Environmentally Sensitive Lands, Applicability of Division and Decision Process**

The determination of the precise location of the steep hillsides on a site shall be made with the information submitted by the applicant, and any other information available, including City maps and records and site inspections....Within the Coastal Overlay Zone, a Neighborhood Development Permit or Site Development Permit is required whenever steep hillsides are located on the premises regardless of encroachment into the steep hillside, and a Coastal Development Permit is required for all coastal development, unless exempt pursuant to Section 126.0704 of the Coastal Development Permit procedures.

[...]

If the site contains steep hillsides but does not have 50 feet of vertical elevation, an off-site analysis of the adjacent property(s) must be made to determine whether the steep hillsides on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevation. See Diagram 1-2. If the 50-foot elevation is met when considering the extension of the steep hillsides off-site, the subject site will be subject to the steep hillside regulations.

[...]

- (4)(a) Within the Coastal Overlay Zone, projects proposing to encroach into steep hillsides shall be subject to the discretionary regulation identified in Section 143.0142(a)(4) of the Environmentally Sensitive Lands regulations. Projects shall be evaluated on a case-by-case basis to determine if encroachment, as defined in Section 143.0142(a)(4)(D) of the Environmentally Sensitive Lands regulations, can be permitted. It is the intent of the regulations and the Steep Hillside Guidelines that development be located on the least sensitive portions of a site and that encroachment into areas containing steep hillsides, sensitive biological resources, geologic hazards, view corridors identified in adopted land use plans or viewsheds designated on Map C-720, be avoided or minimized if unavoidable. Projects proposing to encroach into steep hillsides shall demonstrate conformance with the Environmentally Sensitive Lands regulations and the Design Standards in Section II of the Steep Hillside Guidelines and result in the most sensitive design possible.

Encroachment shall not be permitted for the following:

- Projects where the encroachment is solely for purpose of achieving the maximum allowable development area;
- **Accessory uses or accessory structures including, but not limited to patios, decks, swimming pools, spas, tennis courts, other recreational areas or facilities, and detached garages, ...**
[emphasis added]

[...]

As noted in the project description, the subject site contains an existing single-family residence with a rear yard patio. The western portion of the site slopes steeply down from the patio. Beyond the western property line the steep slopes continue to the west and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean. Sumner Canyon and the surrounding area is for the most part natural. Single-family residential development does border the canyon, but is set back along the canyon rim. For the most part, no structures extend beyond the canyon rim into the adjacent steep natural hillsides. The purpose and intent of the Steep Hillside Regulations is to assure that development occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area. The reservation of the natural character of these areas depends upon minimizing visual intrusions. This is especially important for those locations that are visible from natural open space systems, as is the case with the subject proposal, which is located adjacent to, and is visible from, the Scripps Coastal Reserve. It is for these reasons that the Commission, in approving the original PRD development, required that no development extend beyond the canyon edge onto the steep hillsides.

The proposed development will occur on steep hillsides and includes removal of an existing wooden deck, grading of the entire hillside area, excavation of the hillside to

accommodate the pool and then construction of a pool and spa on the steep hillside. The above-cited steep hillside regulations require that development on steep hillsides be avoided and that if unavoidable, development be minimized. The LCP provisions allow for some encroachment into steep hillsides, but only in those circumstances where such an encroachment cannot be avoided due to a predominance of steep slopes rendering the site otherwise undevelopable. For the proposed development, such is not the case. The applicant already has achieved reasonable use of the site with the existing single-family residence and its associated yard and patio areas, which were constructed on the flat, non-steep portions of the site. As such, based on the above-cited LCP provisions, there is no requirement that encroachment onto steep hillsides be permitted. More importantly, as cited above, the steep hillside guidelines specifically prohibit encroachment into steep hillsides for accessory improvements such as swimming pools and spas. Thus, the proposed swimming pool and spa on steep hillsides is not consistent with the certified LCP and therefore must be denied.

4. Public Access. Section 30210 of the Coastal Act is applicable and states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

In addition, Section 30212 of the Coastal Act pertains to the proposed development and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

Upon reliance of these policies of the Coastal Act, the certified La Jolla-La Jolla Shores LCP contains policies to protect public access, which include the following:

La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved.

New development should not prevent or unduly restrict access to beaches or other recreational areas.

Vertical Access

...In all new development between the nearest coastal roadway and the shoreline the City will make a determination of the need to provide additional vertical access easements based upon the following criteria:

[...]

e) public safety hazards and feasibility of reducing such hazards. [...]

The subject site is located on the northwest end (cul-de-sac) of Inyaha Lane, just west of La Jolla Shores Drive (the first public road in this area) in the La Jolla community of the City of San Diego. The project site contains a relatively flat pad where the existing home is located and then slopes steeply down to the west and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean. Currently, no formal public access into Sumner Canyon from the subject site is provided, nor would such access be desirable due to the steepness of the canyon and the need to protect the habitat values of the canyon. There is an access path that loops through the nearby Scripps Coastal Reserve available to the public off of La Jolla Farms Road, approximately 2 blocks north and west of the subject site. However, due to the extensive canyon system, no direct public access to the shoreline is available in the surrounding area. In any case, the proposed project will not adversely affect public access opportunities in this area and is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

5. Violation of Coastal Act. Unpermitted development has occurred on the subject site including, but not limited to, the demolition of an existing wooden deck and partial construction of a 25 ft. by 56 ft. split level pool with spa and grading on a steep hillside without the required coastal development permit, and is a violation of the Coastal Act. While the size of the finished pool is proposed to be reduced to 15 ft. by 45 ft., the foundation, pool floor and most of the walls for the larger pool have already been constructed and are proposed to remain as retaining walls with this amendment request. While the City of San Diego did authorize work to begin on the pool, the City's decision to allow such work to occur without issuing the required coastal development permit for the pool project was appealed to the Coastal Commission on July 19, 2005. On July 27, 2005, the applicant was informed of the appeal by Coastal Commission staff and was instructed in writing to stop work on the development, because once an appeal is filed, the City's authorization is "stayed" pending the outcome of the appeal. However, the applicant did not stop work on the development until the Executive Director issued an Executive Director Cease and Desist Order on August 12, 2005. The applicant filed suit challenging the Cease and Desist Order and, at the applicant's request, the Court then allowed the applicant to proceed with certain portions of the pool construction that the applicant asserted were needed to stabilize the site; however, the court clearly indicated that the applicant would do this work at its own risk of a subsequent permit denial.

Although development has taken place prior to submission of this permit amendment request, consideration of this application by the Commission has been based solely upon the policies and provisions of the certified City of San Diego LCP as well as the public access and recreation policies of Chapter 3 of the Coastal Act. Review of this permit

application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

6. Local Coastal Planning. The City of San Diego has a certified LCP and has been issuing coastal development permits for its areas of jurisdiction, including the La Jolla area, since 1988. The subject site is zoned and designated for residential use in the certified LCP. The proposed swimming pool and spa is consistent with that zone and designation. However, the subject site contains a steep hillside and is subject to the Steep Hillside Regulations of the City's implementation plan. The pool and spa proposed on the steep hillside portion of the site are not consistent with the Steep Hillside Regulations nor the policies and provisions of the certified La Jolla-La Jolla Shores Land Use Plan relative to protection of steep hillsides. Therefore, the Commission finds that the subject proposal would prejudice the ability of the City of San Diego to continue to implement its certified LCP consistently for the La Jolla area of the City of San Diego.

7. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

As discussed above, the proposed development of a pool and spa on the steep hillside on at the site of an existing single-family residence is inconsistent with the policies of the certified La Jolla-La Jolla Shores LCP Land Use Plan as well as with the Steep Hillside Regulations of the City's Land Development Code. The proposed improvements would not only alter natural landforms, they would also result in visual impacts from public vantage points and scenic areas. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include the no project alternative or siting the swimming pool and spa within the existing tiled patio area on the flat portion of the site next to the home without encroaching beyond the slope edge and into the steep hillside portion of the site. These alternative would eliminate all hillside impacts, alteration of natural landforms and would minimize adverse visual impacts associated with the proposed development. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and must be denied.